

**United States Department of Labor
Employees' Compensation Appeals Board**

S.J., claiming as widow of B.J., Appellant)	
)	
and)	Docket No. 23-0903
)	Issued: April 23, 2024
DEPARTMENT OF AGRICULTURE,)	
INSPECTIONS OPERATIONS PROGRAM,)	
Minneapolis, MN, Employer)	
)	

Appearances:
Brett Blumstein, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 5, 2023 appellant, through counsel, filed a timely appeal from a December 9, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee's death on September 28, 2017 occurred in the performance of duty, as alleged.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 13, 2018 appellant filed a claim for compensation by widow (Form CA-5), alleging that her wife, the employee, passed away on September 28, 2017 of severe coronary atherosclerosis due to factors of her federal employment. On the reverse side of the claim form, Dr. John W. Ellis, Board-certified in environmental and family medicine, opined that the direct cause of death was severe coronary atherosclerosis. He noted that he had reviewed a statement by appellant dated January 20, 2019 and he checked a box marked "Yes" indicating that the employee's death was due to the factors of her federal employment as outlined in appellant's statement.

In support of her claim, appellant submitted a state health department certificate of death dated October 18, 2017, which noted that the employee's cause of death on September 28, 2017 was severe coronary atherosclerosis and atherosclerotic cardiovascular disease with marked cardiomegaly.

In a statement dated January 20, 2019, appellant asserted that the employee experienced undue physical and mental stress while working as a compliance investigator, including investigation and enforcement of a nationwide program of oversight related to meat, poultry, and egg products. She indicated that the employee worked in high-stress environments on a daily basis, where she was exposed to and dealt with unsafe and volatile products associated with detentions, civil seizures, and voluntary recalls. Appellant noted that the employee was under consistent travel demands to respond to biosecurity threats and food-borne illness outbreaks, which often came on short notice due to emergency situations or special investigative requirements. She recounted that travel involved visits to meat and poultry processing plants, slaughterhouses, and warehouses, where she was required to navigate over uneven, slippery, wet, or frozen surfaces and interact with individuals who could be fearful, skeptical, uncooperative, threatening, or potentially dangerous to her. Appellant indicated that the employee was also exposed to high levels of noise and vibration, dust, dirt, blood, exposed moving parts of machinery, and contagious diseases requiring protective clothing and gear.

In a report dated February 4, 2019, Dr. Ellis reviewed appellant's January 20, 2019 statement and various medical records. He diagnosed severe coronary atherosclerosis with cardiovascular disease and marked cardiomegaly. Dr. Ellis opined that the direct cause of the employee's death was severe coronary atherosclerosis. He explained that her job duties caused frequent outpouring of stress chemicals such as epinephrine and cortisol and that these chemicals

³ Docket No. 22-0507 (issued July 8, 2022).

led to changes in the employee's lipid metabolism which contributed to severe atherosclerosis. Dr. Ellis opined that the chemicals also caused coronary spasm which contributed to death of heart muscle and the employee's death.

In a May 13, 2019 development letter, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional factual information regarding appellant's claim, including comments from a knowledgeable supervisor regarding the accuracy of all statements submitted in support of her claim. It also requested information regarding dates and examples of surveillance and outbreak investigations by the impacted employee, frequency of travel per month and year by the employee, record of any encounters between the employee and law enforcement due to threatening or dangerous individuals, and a copy of the employee's job description. OWCP afforded the employing establishment 30 days to respond.

OWCP's development letter to the employing establishment was returned by the U.S. Postal Service on May 14, 2019 as "vacant" and unable to forward.

In response to OWCP's development questionnaire, appellant, through counsel, submitted a license and certificate of marriage dated November 7, 2014 and a statement, which indicated that the employee experienced previous symptoms high blood pressure and chest pains and took medication for diabetes, high blood pressure, and high cholesterol. The statement noted that the employee performed work duties in Houston, Texas, for hurricane relief during the week prior to her death and that the employee smoked cigarettes on a daily basis and drank alcohol approximately three times per week, but did not drink during the Houston trip.

By decision dated July 29, 2019, OWCP denied appellant's claim for survivor's benefits, finding that the evidence of record was insufficient to establish that the claimed work factors occurred, as alleged.

On July 2, 2020 appellant, through counsel, requested reconsideration of OWCP's July 29, 2019 decision. In support of the request, appellant submitted various records from 2014 and 2015 for routine primary care, lab work, and treatment to the employee's left lower extremity. She also submitted travel documents including: a travel itinerary for the employee for flights to and from Los Angeles, California, on September 9 and 23, 2017; hotel receipts which indicated that the employee intermittently stayed in various hotels in Texas from September 9 through 23, 2017; fuel receipts dated from September 11 through 23, 2017; and baggage receipts dated September 9 and 23, 2017.

By decision dated September 15, 2021, OWCP denied modification of the July 29, 2019 decision.

Appellant, through counsel, appealed to the Board. By decision dated July 8, 2022, the Board remanded the case to OWCP for further development of the evidence regarding appellant's claim for survivor's benefits, including requesting that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding her allegations, including

information regarding the employee's alleged work factors.⁴ The Board further noted that, if the employing establishment did not appropriately respond to OWCP's request for additional information, OWCP may accept appellant's allegations as factual in accordance with its regulations.⁵

On remand, OWCP sent a September 13, 2022 development letter and detailed list of questions to the employing establishment at an updated address. It requested that a knowledgeable supervisor respond to the accuracy of all statements submitted in support of appellant's claim. OWCP further advised that, under its implementing regulations,⁶ it may accept a claimant's allegations as factual in the absence of a full reply from the employing establishment. It afforded the employing establishment 30 days to submit the requested evidence. No response was received.

By decision dated December 9, 2022, OWCP denied appellant's claim for survivor's benefits, finding that the evidence of record was insufficient to establish that the claimed work factors occurred, as alleged.

LEGAL PRECEDENT

The United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁷ An award of compensation in a survivor's claim may not be based on surmise, conjecture, or speculation or on appellant's belief that the employee's death was caused, precipitated, or aggravated by the employment.⁸ Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his or her federal employment. As part of this burden, she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his or her federal employment. Causal relationship is a medical issue and can be established only by medical evidence.⁹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of

⁴ *Id.*

⁵ 20 C.F.R. § 10.117(b).

⁶ *Id.*

⁷ 5 U.S.C. § 8133.

⁸ *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

⁹ *See R.G. (K.G.)*, Docket No. 19-1059 (issued July 28, 2020); *L.R. (E.R.)*, 58 ECAB 369 (2007).

employment and may not be considered.¹⁰ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, it must base its decision on an analysis of the medical evidence which has been submitted.¹¹

OWCP's regulations provide that an employing establishment who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.¹² Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.¹³

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant alleged that the employee's death was caused, precipitated, or aggravated by the physical and mental stress associated with her position as a compliance investigator, including investigation of outbreaks and biosecurity threats, regulatory oversight, enforcement activities related to meat, poultry, and egg products, frequent travel on short notice, and exposure to hazardous environments and volatile products. She provided a detailed response to OWCP's May 13, 2019 development letter, along with supporting documentation of the employee's work travel during a hurricane response from September 9 through 23, 2017.

Following the Board's July 8, 2022 decision,¹⁴ OWCP sent a September 13, 2022 development letter with a detailed series of questions to the employing establishment at an updated address. The record reflects that the employing establishment did not respond to OWCP's request, and there is no indication that the September 13, 2022 letter was returned as undeliverable.¹⁵

OWCP's procedures provide that, when developing emotional condition claims, the claims examiner must obtain from the claimant, agency personnel and others, such as witnesses to the

¹⁰ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹¹ *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² 20 C.F.R. § 10.117(a); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (May 2023).

¹⁴ *Supra* note 3.

¹⁵ In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient. This presumption is commonly referred to as the "mailbox rule." It arises when the record reflects that the notice was properly addressed and duly mailed. *See J.H.*, Docket No. 20-0785 (issued October 23, 2020); *Kenneth E. Harris*, 54 ECAB 502 (2003). (Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee).

incident, a statement relating in detail exactly what was said and done.¹⁶ It also provides that in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.¹⁷ Accordingly, OWCP should obtain a response from the employing establishment to the allegations of stressful work conditions and any additional relevant evidence or argument.¹⁸

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹⁹ OWCP has an obligation to see that justice is done.²⁰

For these reasons, the case will be remanded to OWCP for further development of the evidence regarding appellant's allegations of stressful conditions at the employee's work. As the Board ordered in the prior decision, OWCP shall request that the employing establishment provide any relevant evidence to which it has access,²¹ including a response from the employing establishment to the September 13, 2022 development letter and address all of appellant's allegations. Its procedures provide that, if an employing establishment fails to respond to a request for comments on a claimant's allegations, OWCP's claims examiner may accept the claimant's statements as factual.²² After such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁶ *Supra* note 13 at Chapter 2.804.17(j) (July 1997).

¹⁷ *Id.* at Chapter 2.800.7(a)(2) (June 2011).

¹⁸ *See C.A.*, Docket No. 23-1056 (issued January 30, 2024); *L.O.*, Docket No. 22-1266 (issued June 8, 2023); *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *see also P.K.*, Docket No. 21-0967 (issued December 3, 2021).

¹⁹ *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2013). *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71.

²⁰ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

²¹ *See A.O.*, Docket No. 19-1612 (issued April 8, 2021) and *A.O.*, Docket No. 16-1779 (issued November 22, 2017); *S.L.*, Docket No. 19-0387 (issued October 1, 2019) and *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

²² *Supra* note 18.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2022 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: April 23, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board